

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLN. OF: SCHWARTZ et al

SERIAL NO.: 09/801,353

FILED: March 7, 2001

FOR: MASSAGING BED REST WITH LIGHT

DOCKET: BROOKSTONE 00.04



COPY OF PAPERS
ORIGINALLY FILED

TECHNOLOGY CENTER R3700

JUN 10 2002

RECEIVED

Assistant Commissioner of Patents and Trademarks
Washington, D.C. 20231

**STATEMENT OF FACTS IN SUPPORT OF PETITION TO MAKE SPECIAL
BECAUSE OF ACTUAL INFRINGEMENT (M.P.E.P. § 708.02)**

Dear Sir:

The undersigned, Norman P. Soloway, the attorney of record of the subject application, makes the following statement:

(1) I, Norman P. Soloway, 175 Canal Street, Manchester, NH 03101, am an attorney for Brookstone Company ("Brookstone"), the Assignee of the subject application.

(2) I am familiar with the contents of the subject application, including the claims.

There is an actual infringement of the subject invention.

(3) I conducted a prior art search prior to the initial filing, and have, since the initial filing, conducted a further prior art search. Copies of the various prior art references identified in the aforesaid prior art searches are provided herewith in connection with a Prior Art Disclosure Statement.

(4) I believe the presently pending claims of the subject application are novel and patentable over all of the known prior art.

(5) The subject application describes and claims a commercial product being sold by Brookstone (see Exhibit A).

HAYES, SOLOWAY,
ENNESSEY, GROSSMAN
& HAGE, P.C.
175 CANAL STREET
MANCHESTER, NH
03101-2335 U.S.A.

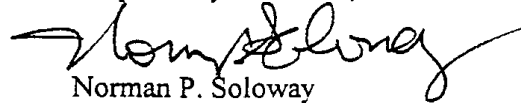
603-668-1400

(6) Earlier this year, I became aware of a lounge pillow with massage and reading light being offered by Tactica International ("Tactica") under the "IGIA" brand. The Tactica product was first advertised in the January 2001 pre-show HomeWorld Special Supplement for Housewares Census 2001 (see Exhibit B). Immediately upon learning of the Tactica product, I wrote Tactica, per the attached letter, Exhibit C, demanding that they withdraw the subject product from the market. Tactica responded per the attached letter, Exhibit D. I replied by letter, Exhibit E, which letter remains unanswered. Despite Tactica's assertion that their product did not infringe, Tactica did not display their lounge pillow with massage mode and reading light at the January 2001 Housewares Show.

(7) Subsequently, in April 2001, a slightly modified backrest with massage and light was advertised as being available from IGIA in the "Skymall Catalog" (Exhibit F). The only difference between the product shown in the HomeWorld Catalog (Exhibit B) and the Skymall Catalog (Exhibit F), is the addition of a tethered control.

(8) I have made a rigid comparison of the Tactica product with the claims of the subject application and believe that the product sold by Tactica infringes at least claims 1, 2, 4, 5, 7, 10, 11, 12, 14, 15, 16, 25, 27, 28, 30, 31, 32, 34, 36, 37, 45, 46, and 47 of the application.

Respectfully submitted,



Norman P. Soloway
Attorney for Applicant
Registration No. 24,315

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner of Patents and Trademarks, Washington, D.C. 20231 on August 16, 2001 at Tucson, AZ.

By: Kim Ford

HAYES, SOLCWAY,
HENNESSEY, GROSSMAN
& HAGE, P.C.
175 CANAL STREET
MANCHESTER, NH
03101-2335 U.S.A.
603-668-1400